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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ERNESTO HERNANDEZ,

Defendant and Appellant.

B268520

(Los Angeles County
Super. Ct. No. GA076653)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Michael D. Carter, Judge. Affirmed.

Daniel G. Koryn, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Ernesto Hernandez was convicted of first degree murder in 2011. He appealed, and, due to prejudicial error,¹ we reversed his first degree murder conviction and remanded the matter to the trial court with the direction that the People could accept a reduction to second degree murder in lieu of retrying him for first degree murder. (*People v. Guzman* (Oct. 23, 2014, B243895) [nonpub. opn.].) On remand, the conviction was reduced to second degree murder, and Hernandez was sentenced accordingly. He appeals. We affirm the judgment.

BACKGROUND

The facts underlying Hernandez's crime are set forth more fully in our prior opinion, of which we take judicial notice. (Evid. Code, § 451, subd. (a).) To summarize, on the evening of June 27, 2008, Hernandez was with Albert Guzman, Miguel Flores Pacheco and Fernando Valencia. The friends called themselves Pepper Street, which had the *raison d'être* of partying and fighting. That night, Guzman was armed with a gun. While driving around looking for people to fight, they encountered Anthony Taylor, who they beat up. Later, they saw Michael Delatorre, an associate of Summit Street, a rival gang. Guzman shot Delatorre, killing him.

¹ Hernandez was convicted of first degree murder as an aider and abettor under the natural and probable consequences doctrine. *People v. Chiu* (2014) 59 Cal.4th 155, however, held that first degree premeditated murder cannot be a natural and probable consequence of a target offense.

On November 30, 2011, a jury found Hernandez guilty of first degree murder (Pen. Code, § 187, subd. (a)).² The jury found true personal gun-use (§ 12022.53, subds. (b), (c), (d) & (e)(1)) and gang (§ 186.22, subd. (b)(1) & (4)) allegations. On September 7, 2012, the trial court sentenced Hernandez to 25 years to life for the murder plus 25 years to life for the gun enhancements.

We reversed Hernandez's conviction on appeal and remanded the matter to the trial court with the direction that the People could accept a reduction of the conviction to second degree murder or retry him. (*People v. Guzman, supra*, B243895, at [p. 55].)

On remand, the People accepted the reduction and, on September 28, 2015, the trial court sentenced Hernandez to 40 years to life (15 years to life for second degree murder plus a consecutive 25 years to life for the gun allegation).

DISCUSSION

After review of the record, Hernandez's court-appointed counsel filed an opening brief which raised no issues and asked this court to conduct an independent review of the record, under *People v. Wende* (1979) 25 Cal.3d 436, 441. By letter dated August 17, 2016, we advised Hernandez that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. We received no brief or letter.

² All further undesignated statutory references are to the Penal Code.

We have examined the record and are satisfied Hernandez's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.